IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO.9 OF 2003

The Commissioner of Central
Excise, Pune III, ICE House,
41 A Sasoon Road, Opp.
Wadia College, Pune 411 001. .. Applicant.

V/s.

Laxmi Vishnu Textile Mills Ltd.,
Station Road, Solapur
present address for
Present address for communi-
cation M/s.Laxmi Vishnu
Textile Mills Limited,
C/o.Apte Amalgamations Ltd.,
Uniot No.4, Sumer Kendra,
Behind Mahendra Towers,
Pandurang Budhkar Marg,
Worli, Mumbai - 400 018. .. Respondent.

Mr.P.S. Jetly with Mr.R.C. Master for the applicant.

Mr.E.P. Bharucha, Senior Advocate with Mr.Jitendra Jain i/by Shaunak Satpute & Co. for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 7TH SEPTEMBER, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. This application filed by the Commissioner of Central Excise Pune under Section 35(H) of the Central Excise Act, 1944 was admitted on 9-6-2005 on the questions set out in the application which reads as follows :

> 1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that

the demand of Rs.64460353.17 was barred by limitations overlooking the fact that the assessment had been done provisionally in view of the interim order of the Hon'ble Delhi High Court.

2. Whether provisional assessment under Rule9B done at the behest of the respondent and as per order of Hon'ble Delhi High Court whereby the respondents bound themselves by executing B-13 Bond as per Central Excise Rules, can be treated as irregular.

3. Whether the respondents who in their stay petition to Hon'ble Delhi High Court, voluntarily requested to follow the procedure of Provisional Assessment under Rule 9B and after having been given interim relief thereto, availed the benefit can subsequently say that the provisional assessment was not in order as held by the Appellate Tribunal.

2. In this case, the Tribunal has decided the issue against the revenue inter alia by relying upon a decision of the Apex Court in the case of J.K. Cotton Spg. & Wvg. Mills Co. Limited V/s. Collector of Central Excise reported in 1998 (99) E.L.T. 8 (S.C.).

3. In our judgment delivered today i.e. on 7-9-2007 in First Appeal No.2597 of 2005 (The Jam Shri Ranjitsinghji Spg. & Wvg. Mills Co. Limited V/s. Union of India) where the facts are similar to the facts of the present case, we have held that the ratio laid down by the Apex Court in the case of J.K. Cotton Mills Case (Supra) have no application.

4. The present application being a reference

application, in the light of the judgment of the Apex Court in the case of Commissioner of Customs V/s. Central Mfg. Technical Institute reported in 146 E.L.T. 27, the questions raised in this application cannot be answered without calling for a reference.

5. In this view of the matter, since question of law do arise from the order of the Tribunal the application is allowed. The Tribunal is directed to forward a statement of the case as expeditiously as possible by raising the aforesaid questions of law.

6. Accordingly, the application is allowed with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)